

EXHIBIT D

1 IN THE UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF FLORIDA

3 JACKSONVILLE DIVISION

4 CASE NO. 3:04 CV-146-V-99-HTS

5 Sea Star Line, LLC
6 a limited liability company,

7 Plaintiff,

8 vs.

9 EMERALD EQUIPMENT LEASING,
10 INC., a corporation,

11 Defendant.

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14 Deposition of PHILIP BATES, taken on behalf
15 of the Defendant, pursuant to Notice of Taking

16 Deposition in the above-entitled action, on Monday,

17 January, 10th, 2005, at 9:45 a.m., at the offices of

18 Powers Reporting, Inc., 220 East Forsyth Street,

19 Jacksonville, Florida, before Sherry Brazier, a Notary

20 Public in and for the State of Florida at Large.

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1 writing to govern the lease arrangements at that time?

2 MR. ARMSTRONG: Object to the form.

3 Q If you know.

4 A There were additional discussions of a more
5 formal document, yes.

6 Q And what were those discussions?

7 A Either at this time or later I believe that
8 there was discussion to write a more extensive and
9 formal document.

10 Q And was there any particular reason for
11 that?

12 A Well, this was brief and it was the
13 essential elements of a short-term usage agreement,
14 but, for instance, as it says in the first paragraph
15 there was potential that we might purchase some of
16 their equipment after inspection.

17 Q And was some equipment purchased?

18 A Yes. After some time, yes.

19 Q And whether or not there was a purchase of
20 equipment, would that have some bearing on whether or
21 not to do a formal lease agreement?

22 MR. ARMSTRONG: Objection to the form.

23 Q If you know.

24 A I don't think so.

25 Q Okay. But at some point in time there was

1 some discussion that we should have some formal

2 written lease agreement?

3 A There was some discussion about that, yes.

4 Q And why did the parties determine that there

5 should be something more formal than this short-term

6 user agreement?

7 MR. ARMSTRONG: Objection to the form.

8 A Repeat that, please.

9 Q Why did -- did you believe there should be

10 more, you on behalf of Sea Star, believe there should

11 be a more formal written document?

12 A Usually any type of equipment agreement is

13 expressed in a more formal document.

14 Q And what I'm asking is, is why did you make

15 a determination that we would now need that -- or that

16 Sea Star would like to have that as opposed to the

17 short-term usage agreement that you had on May 1st,

18 2002?

19 A A longer agreement would normally include

20 more words.

21 Q Well, let me ask you this, was there -- at

22 some point in time did it appear to Sea Star that

23 perhaps we would be needing this equipment maybe

24 longer than Sea Star had originally thought as the

25 requirements became more known?

1 A We had -- we agreed to pay for equipment we
2 used. We were also required by the bankruptcy court
3 to store NPR equipment for all leasing companies
4 including NPR at our terminals which included Emerald
5 so there was equipment that we had to store and
6 receive that we never used.

7 Q Okay.

8 A We didn't have to pay for that.

9 Q The equipment that you say that Sea Star was
10 obligated to -- or had agreed to store, are we talking
11 about this in transit equipment or are we talking
12 about other equipment as well?

13 A We're talking about other equipment as well
14 as equipment in transit after it completed it's
15 voyage.

16 Q Well, I think you told me at the time of the
17 acquisition equipment was everywhere, this NPR
18 equipment was -- it could be with a customer, could be
19 at an inland depot, correct?

20 A And it could be at a terminal.

21 Q And it could be at a terminal. Well, if it

22 was at a customer or an inland depot, did Sea Star

23 have any obligation to store that equipment?

24 MR. ARMSTRONG: Object to the form.

25 Q If you know.

1 Q IQSHIP's a computer program of some sort?

2 A Yes, it is. It's a software.

3 Q And is that -- is that something special

4 that only Sea Star uses?

5 A No. It's a -- IQSHIP has been used by a

6 number of other lines in the world. In addition to

7 the others obviously we also use it to track

8 equipment.

9 Q Do you know if Sea Star Line used any

10 Emerald equipment that wasn't documented by a TIR?

11 A I don't know of any that would be used

12 without a TIR.

13 Q If -- is it possible that equipment was

14 being used without a TIR?

15 MR. ARMSTRONG: Object to the form.

16 Q If you know.

17 A No.

18 Q If Sea Star used certain equipment for which

19 a TIR was not prepared, do you believe that Sea Star

20 would be obligated to pay for that equip- -- the use

21 of that equipment if it actually used it?

22 MR. ARMSTRONG: Object to the form.

23 A If we used equipment we agreed to pay. I

24 also just said that I don't think there could be

25 equipment used without a TIR.

1 A Particularly Internet related access for
2 customers primarily.

3 Q Did Sea Star prepare any reports in
4 connection with its plans for an updated computer
5 system?

6 A I don't remember a particular report.

7 Q Who would know that information that's still
8 at Sea Star?

9 A The person who is in charge of overall ITs
10 is a fellow named Carl Fox.

11 Q And what's his position?

12 A He is in charge of IT and customer service.

13 Q And does he work here in Jacksonville?

14 A Yes.

15 Q Did Sea Star ever store equipment for
16 Emerald?

17 A Yes.

18 Q Did it ever notify Emerald specifically what
19 equipment it was storing?

20 MR. ARMSTRONG: Object to the form.

21 A I remember that the inventories of equipment

22 that was being stored by Sea Star for Emerald was

23 provided to Emerald in San Juan, for instance.

24 Q Okay. Other than that, do you know whether

25 there was any notification to Emerald of equipment it